

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

KENNETH PITTS,

Plaintiff,

v.

1:23-cv-00120-SCY

SAN JUAN COLLEGE,

Defendant. s

PARTIES' JOINT STATUS REPORT ON STATUS OF APPEAL

Pursuant to the Court's Order for Status Report (Doc 40), a telephonic meeting was held at approximately 10:00 am (MT) on November 25, 2024, and was attended by:

Kenneth Pitts
Plaintiff (*pro se*)
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Attorneys for City Defendants

Defendant San Juan College's Report to the Court

In response to the Court's request for "a joint report on the status of the appeal" (Doc 40), Defendant states that the United States Court of Appeals for the First Circuit has been contacted, and Defendant has learned that Plaintiff's appeal is still pending. Plaintiff filed a Motion for Appointment of Counsel on December 11, 2023, which the First Circuit confirmed has not yet been addressed by that court. No other information on the status of the appeal is known by Defendant.

Plaintiff filed his “Individual Response to Order for Joint Status Report as of 11/25/2024” (Doc 41) on November 26, 2024, after Defendant’s counsel spoke with Plaintiff (*pro se*) and the parties discussed the timing of filing a Joint Status Report. Thereafter, Plaintiff filed his “Request for Clarification on Order for Joint Status Report” (Doc 42) on November 26, 2024. Both filings contain reference to the parties’ confidential settlement discussions, the inclusion of which is improper and inadmissible under these circumstances under Fed. R. Evi. 408. This Court should strike both pleadings and direct Plaintiff not to send such information to the Court or to file such information in the open record. Plaintiff’s addition of the same information below is likewise improper.

The remaining pages below were drafted by Plaintiff after the parties exchanged this document several times. Defendant does not agree with Plaintiff’s assertions.

Plaintiff’s (*pro se*) Report to the Court

As stated in my 11/25 submission, I spoke with Attorney Salganek via a phone call, which I initiated, as the Attorney had not responded to my attempts to contact him via email. This was 11 days after the Judge Yarbrough Order had been issued, which prompted the completion and submission of my Individual Status Report. The phone call made to Attorney Salganek was simply a courtesy call to inform him of my intent to submit my Status Report.

Attorney Salganek’s request regarding Rule 408 implies that the Defendant has made an effort toward Settlement, but in fact they have not. Rule 408 (2)(b) lists Exceptions that allow the Court to admit evidence such as that I have submitted, as my intent is to show the “undue delay” of the Defendant. Negotiations for settlement have not begun, as the defendant did not accept the terms of my 7/26/2024 offer, nor did they make a counteroffer to that request for resolution.

Furthermore, the defendant has not responded to my 2nd resolution request made on 11/25/2024 and has yet to provide good reasoning for their undue delay. Because it is not always easy to tell when compromise negotiations begin, and informal dealings end, I respectfully request this Court to honor my submissions and assist in persuading the Defendant to make a good faith effort toward the settlement of this matter.

PLAINTIFF INDIVIDUAL RESPONSE TO ORDER FOR JOINT STATUS REPORT
SUBMITTED ON 11/25/2024

This case arises due to former employee and PTA Program Director, Therese Millis, and the Defendant, San Juan College, committing "tortious acts" including Racial Discrimination and Retaliation which have harmed the Plaintiff, an African-American Male, educationally and financially as he resides in the state of Massachusetts.

The former PTA Program Director, Therese Millis knowingly committed an intentional act of racial discrimination as she permitted multiple non-minority students who reside in the state of California from the same "Online/Hybrid" cohort to complete their rotations with their employer, San Luis Sports Therapy, while denying my requests to do the same with "previous and/or potential" employers, citing my requests to be "a violation of policy" (See 2nd Opp.,D,E,F)

The San Juan College "Online/Hybrid" PTA Program allows students from various parts of the U.S. to earn a PTA degree from the comfort of their home. In the online/hybrid Physical Therapist Assistant program students complete only five semesters, as most of your coursework will be online. You are required to travel to the San Juan College campus for approximately 7-18 consecutive days (including weekends and/or holidays) for labs during each semester, and then return to the city / state in which you reside.

Of the approximate 17 online/hybrid students in my cohort, roughly 5 resided in the state of New Mexico, and none of the students were residents of Farmington, NM during our enrollment in the San Juan College Online/Hybrid PTA Program. The goal of the online/hybrid education program is to earn a degree conveniently from home (distance learning). At no point did I consider moving out of Massachusetts

District Court Judge Angel Kelley has transferred this case to the District of New Mexico, Albuquerque Division pursuant to Fed. R. Civ. P. 12(b)(2) for lack of jurisdiction over the College based on grounds that should be rejected. (See 2nd Opp, Ex.A) I have appealed the decision and request further review pursuant The Massachusetts Long-Arm Statute, M.G.L. c. 223A, §3 (c), with the intent to have my case heard in Massachusetts, as damages to the Plaintiff have occurred only in the state of Massachusetts, not in New Mexico. (See 2nd Opposition, Ex.B)

Most importantly, New Mexico Court documents show that Luke Salganek is privy to evidence which confirms my allegations of racial discrimination, as he served as Counsel for the Defendant San Juan College, against Dr. Therese Millis, after her employment termination on or about June 9, 2020 and prior to the expiration of her 2019 - 2020 contract. (See 2nd Opp.,Ex.C)

In addition to this, retaliatory acts on the part of San Juan College and the PTA Program ensued after the filing of my racial discrimination complaint with the College, and against Millis. Not only did Millis' discriminatory acts beginning in Spring of 2019 hinder my ability to acquire gainful employment during the PTA Program, it has also impacted my progress toward graduating from the San Juan College PTA Program, taking the national exam and thereafter securing gainful employment initially in early 2019 and has continued since June of 2020. (See 2nd Opp.,Ex.G)

Counsel for the Defendant (Luke Salganek) is well-aware of the act of Racial Discrimination committed by former San Juan College PTA Program Director, Therese Millis.

Salganek, served or is currently serving as Counsel for San Juan College against the Plaintiff, Therese Mills, as she took legal action against San Juan College for a “for cause” employment termination after the filing of my racial discrimination complaint on June 9, 2020. (See 2nd Opp., Ex.C,H)

CURRENT STATUS

The Pro Se Plaintiff, Kenneth Pitts, does respectfully submit his Individual Status Report pursuant to the Court’s November 14, 2024 Order, as Attorney Luke Salganek had not answered until today 11/25/2024. After speaking with Attorney Salganek via phone this morning, I am sending him a copy of this Individual Status Report with every intention to be a part of the Joint Status Report that has been Ordered and due by December 5, 2024. My apologies if I am incorrect, but my limited understanding of the legal process leads me to believe that Judge Yarbrough may mean for the parties to Confer and seek a resolution with the Ordering of this report as well as to provide a status update. With that in mind I have sought and will continue to seek to confer with the Defendant if that is in fact what Judge Yarbrough is seeking.

1. Prior to the 11/14/2024 Judge Ordered Joint Status Report, I contacted Attorney Salganek via email on July 26, 2024 with a “Resolution Request” as there has been no movement from the First Circuit Court of Appeals.

Attorney Salganek later responded: “My clients have reviewed your request and they do not accept the terms you’ve outlined. If you have any other suggestions I will convey those to my clients, but they do not have a counteroffer” on 8/9/2024. (See Status Report Ex.A)

2. Since the November 14, 2024 Order, Attorney Salganek had failed to contact me or respond to my requests to confer to discuss such as, but limited to: The nature of the case; Discovery and pending motions; A realistic plaintiff demand; A realistic defendant offer; The specific

aspects of the case that are inhibiting settlement; The realistic likelihood that any negotiations will occur, as I believe these topics to be proper in this situation. (See Status Report Ex.B)

3. As of November 20, 2024, I have notified and submitted a copy of the Judge's Order for Status Update on my Appeal to the First Circuit for their review and response. I have been informed that the First Circuit cannot provide any information regarding my appeal at this time. (See Status Report Ex.C)

PLAINTIFF'S STATEMENT

The Plaintiff respectfully requests the assistance of this honorable Court in persuading the Defendant to comply with the Order for Status Report by conferring as may be proper in this situation. As recognized by this court, proceedings in this case have been Stayed for over 19 months. With each passing day, the Plaintiff misses out on numerous gainful employment opportunities. This has been the case for far too long and this honorable court can assist with bringing this ordeal to a realistic close. For this reason, the Plaintiff again requests the assistance of this Court to persuade the Defendant to comply with the Plaintiff to fulfill the Order for Status Report in joint fashion to make a good-faith attempt at resolving this case. (See Status Report Ex.A)

Respectfully submitted,

/s/ Kenneth A. Pitts

Kenneth A. Pitts

Dated: November 25, 2024

Respectfully submitted by:
The Defendant,
San Juan College,
By Its Attorney,

/s/ Luke A. Salganek
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and

Kenneth Pitts
Plaintiff (*pro se*)
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CERTIFICATE OF SERVICE

I, Luke A. Salganek, hereby certify that on December 5, 2024, the foregoing document, filed through the CM/ECF System, will be sent by email and electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and courtesy email copies will be sent to the same and those indicated as non-registered participants.

/s/ Luke A. Salganek
Luke A. Salganek